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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

PAUL CIAFFONI, CONCETTA CIAFFONI, AND
PETER CIAFFONI, Petitioners
AGAINST

BRUNSWICK CORPORATION
AND
BRUNSWICK AUTOMATIC PINSETTER
CORPORATION, Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA

PETTTION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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Petitioner prays that a writ of certiorari issue to review the judgments of the Supreme Court of Pennsylvania entered in the above case on December 13, 1968.

OPINIONS BELOW

The opinions of the Supreme Court of Pennsylvania are not yet officially or unofficially reported.

JURISDICTION

The judgments of the Supreme Court of Pennsylvania were filed on November 12, 1968. A petition for reargument was denied on December 13, 1968. Copies thereof are appended to this petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

A referee in bankruptcy, in response to a reclamation petition, ordered possession of the property in question returned to respondents. While respondents were in the process of removing the property from petitioners leased premises petitioners distrained against the property. The Supreme Court of Pennsylvania apparently viewed this as a collateral attack on an in rem adjudication of the referee while the property was in custodia legis. The questions presented are:

1. Whether property has passed from *custodia legis* when a referee in bankruptcy has entered his order granting possession of the property.

2. Whether possession of property granted by a referee in bankruptcy, in response to a reclamation petition, is an in rem adjudication binding on all who might claim an interest in the property.

STATUTES INVOLVED

The general principles of the Bankruptcy Act of July 1, 1898 as amended are involved but Petitioners rely on no particular provision of that Act nor do they believe there to be a provision of the Act to be determinative of the questions here.

STATEMENT

One Isadore Toder, under an agreement dated July 30, 1960, leased certain property from petitioners, Paul Ciaffoni and Peter Ciaffoni, who owned the property as tenants in common. Under a Rider Agreement which formed part of the lease, the lease was assigned to McDonald Bowl, Inc. (McDonald), a corporation formed by Toder to start a bowling alley. The lease was for a term of ten years, for a total rent of $119,520. It provided, in case of default, bankruptcy, or insolvency, for the entire balance of the rent to become due and payable. Provision was made permitting the lessor to distrain for rent on all property found on the premises.

McDonald proceeded to purchase under conditional sales contracts a great deal of bowling equipment from Brunswick Corporation and Brunswick Automatic Pinsetter Corporation. These corporations filed proper financing statements and became secured creditors. McDonald then defaulted in its obligations to both Brunswick corporations and to the landlords.

On May 3, 1962, in the U. S. District Court for the Western District of Pennsylvania, McDonald was adjudicated a bankrupt. On July 5, 1962, the Referee in Bankruptcy entered an order that appellees were "entitled to take possession of the personal property" that is here in dispute. When appellees sought, on July 20, 1962, to remove the equipment, Paul Ciaffoni personally distrained on all the items and instructed employees of Brunswick to leave the premises and they departed voluntarily. Peter Ciaffoni then, on July 23, 1962, distrained for rent on the equipment, taking possession of it.

Statement.

On July 30, 1962, respondents filed an action in replevin with bond of $300,000. Petitioners not having filed a counter bond, the respondents repossessed the property on September 15, 1962.

After a non-jury trial in The Court of Common Pleas of Washington County, the Honorable Barron P. McCune made an order awarding to Peter Ciaffoni his one-half share of the rents in default. On respondents' exceptions, the court *en banc* vacated the prior order and in an opinion by Judge McCune, ordered judgment for respondents on a third party creditor beneficiary theory.

The Supreme Court of Pennsylvania with concurring and dissenting opinions found that the personalty involved was in *custodia legis* when distrained against. It held that the adjudication of the referee in bankruptcy in response to a reclamation petition was "*in rem* binding on all who might claim an interest in the property."

REASONS FOR GRANTING THE WRIT

The decision of The Supreme Court of Pennsylvania should be reviewed because it erroneously interprets the jurisdiction power and duty of the referee in bankruptcy. Under this decision *custodia legis* of the referee extends for an indefinite period beyond the order making disposition of the property. Neither this Court nor any other Federal Court appears to have considered this problem. And perhaps it would be of little moment if it were not, as here, linked with the presumed in rem nature of the reclamation petition. Here the trustee and referee determined that the general creditors had no interest in the Respondents' property and returned it to them. The Supreme Court of Pennsylvania finds this adjudication to be *"in rem."* What of the judgment creditor who attempts to execute against the property or more importantly the secured creditor of the Respondents'? If neither of these parties appeared before the referee (and it seems clear that neither would have the right to appear) his claim would still be cut off by the order of the referee. With the substantial and increasing use of the state filed security agreement this decision becomes one of great importance. As is the case with Petitioners, those without liens but with an enforceable right to property, possession to which is granted by a referee in bankruptcy to a secured creditor of the bankrupt, will lose that right if the decision of the Supreme Court of Pennsylvania is not overcome or circumscribed. Further, if property such as that in this case remains in *custodia legis* until it is sold or removed from the jurisdiction or the like those with legitimate claims on the property will likely lose the claims because of a referee's order which never

took into considerations the claims involved. Such an abuse of the concept of *custodia legis* should not go without review.

The questions presented in this case are of great significance in the application of the Bankruptcy Act, most especially in the area of secured and judgment creditors. They have never been considered by this Court. The serious question of permitting state courts to decide matters of Federal bankruptcy jurisdiction and power makes this case a peculiarly appropriate one for the exercise of this Court's discretionary jurisdiction.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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